Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

2008 Biennial Regulatory Review of	)	
Regulations Administered	)	WC Docket No. 08-183
By the Wireline Competition Bureau	)	

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

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October 6, 2008

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I. INTRODUCTION AND SUMMARY

Qwest Communications International Inc. ("Qwest") submits these comments in response to the Federal Communications Commission's ("Commission") September 4, 2008 *Public Notice* seeking comments as part of its 2008 Biennial Review of Telecommunications Regulations.[1] Pursuant to Section 11 of the Telecommunications Act of 1996 ("1996 Act"), the Commission is tasked to identify and repeal or modify any regulation that is "no longer in the public interest as the result of meaningful economic competition between the providers of such service."[2] The statute sets forth a very straightforward standard for the Commission, *i.e.,* ascertain the state of economic competition for the particular service being regulated and determine if said competition is "meaningful." If it is, then the regulation(s) must be repealed or modified.

Qwest suggests that the Commission's task is even easier in the context of this year's Biennial Review. Since the 2006 Biennial Review, this Commission has undertaken detailed reviews of competition in regard to various services and has identified regulatory requirements that are not necessary due to the competitive nature of the services involved. For many, if not

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[1] *See Public Notice*, "The Commission Seeks Public Comment in the 2008 Biennial Review of Telecommunications Regulations," FCC 08-201, rel. Sept. 4, 2008.

[2] 47 U.S.C. § 161.

all, of the rules Qwest requests be modified or repealed, the Commission has already made the determinations that form the core of the factors crucial to the standard set by Section 11, *i.e.,* the presence of meaningful competition that renders the rule no longer in the public interest. Thus, Qwest is not asking the Commission to reinvent the wheel in regard to these determinations but merely take the next logical steps based on those determinations.

For the reasons articulated in more detail below, Qwest urges the Commission to 1) Eliminate its Open Network Architecture ("ONA") and comparably efficient interconnection ("CEI") requirements; 2) remove its materiality standard in regard to Responsible Accounting Officers ("RAO") Letter 12; 3) eliminate rules governing deprecation rates, methods and practices of carriers subject to price cap regulation; 4) implement the long overdue removal of the grandfathering requirement for line-shared loops; and 5) modify Rule 32.26's materiality standard to follow generally accepted accounting practices ("GAAP").

II. THE COMMISSION SHOULD DISCONTINUE ONA AND CEI REQUIREMENTS

The time has come for the Commission to eliminate ONA and CEI requirements.[3] The 1996 Act significantly diminished the need for the *Computer III* requirements because competitors could obtain unbundled access and interconnection via Sections 251, 252 and 271 of the Act. In the last few years, the Commission has further chipped away at the ONA/CEI requirements.

[3] *See Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order, 6 FCC Rcd 7646 (1991); *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 97 (1993); *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 2606 (1993).

In the *Wireline Broadband Internet Access Order*,[4] the Commission lifted its *Computer Inquiry* requirements on facilities-based carriers in their provision of wireline broadband Internet access service.[5] Consequently, Bell Operating Companies ("BOCs") were immediately relieved of the separate subsidiary, CEI, and ONA obligations with respect to wireline broadband Internet access services. The Commission concluded that the *Computer Inquiry* obligations are inappropriate and unnecessary for today's wireline broadband Internet access market. The Commission correctly recognized that these rules were adopted based on assumptions associated with narrowband services, single purpose network platforms, and circuit-switched technology. As a result, it was left with no other conclusion than that the current structural separation, CEI, and ONA requirements are outmoded and should be eliminated or replaced.[6]

The Commission also was cognizant of the extreme burdens that the *Computer II* and *Computer III* requirements placed on the BOCs. They impeded the BOCs' ability to develop and deploy innovative products that respond to market demands and reduced their incentive and ability to invest in and deploy broadband infrastructure investment. The Commission noted that its determination was based on the same conditions that led it to eliminate other broadband-

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[4] *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises, Consumer Protection in the Broadband Era*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) ("*Wireline Broadband Internet Access Order*"), *aff'd sub nom.*, *Time Warner v. FCC*, 507 F.3d 205 (3rd Cir. 2007).

[5] This applied to the transmission component of the broadband Internet access service.

[6] *Wireline Broadband Internet Access Order*, 20 FCC Rcd at 14875-76 ¶ 41.

related regulation over the past two years.[7] These factors, when weighed against the benefits of continuing these regulations, rendered a different policy result than the judgment reached at the time the *Computer Inquiry* rules were adopted.

These same realizations led the Commission to forbear from application of the BOC-specific *Computer Inquiry* rules to any information services Qwest may offer in conjunction with one or more of its existing specified broadband services. The Commission again recognized that the rules could impede Qwest's ability to provide the flexible service offerings its end users sought.

The Commission also determined that its unbundling requirements for packet-switched broadband services and the optical transmission services underlying those information services -- and its requirement that BOCs comply with the BOC-specific *Computer Inquiry* requirements by virtue of the use of these telecommunications services -- was not needed to ensure that the

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[7] *Id.* at 14877-78 ¶ 44, n.120, *citing*, *Triennial Review Order*, 18 FCC Rcd at 17141-54 ¶¶ 272-97 "(stating that refraining from imposing unbundling obligations on incumbent LEC next-generation networks will stimulate facilities-based deployment, particularly in light of a competitive landscape for broadband infrastructure);" *see In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Reconsideration, 19 FCC Rcd 15856 ¶ 1 (2004) (finding that fiber loops deployed at least to the minimum point of entry of multiple dwelling units that are predominantly residential should be treated as fiber-to-the-home loops and not be subject to section 251 unbundling obligations); *In the Matter of Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c), Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c),* 19 FCC Rcd 21496, 21508 ¶ 25 (2004); *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Reconsideration, 19 FCC Rcd 20293 ¶ 1 (2004).

charges or practices associated with them are just, reasonable, and not unreasonably discriminatory.[8]

As part of this forbearance inquiry it determined that forbearing from many of the BOC-specific *Computer Inquiry* rules to Qwest's packet-switched broadband services and optical transmission services, will serve the public interest. Specifically, it found that the *Computer III* CEI and ONA requirements "unnecessarily constrain[ed]" how Qwest may offer its broadband transmission services to its enterprise customers. The Commission recognized that "[r]emoving these unnecessary constraints will promote competitive market conditions by increasing the competitive pressure on all enterprise services providers. . . and will increase Qwest's incentives to invest in advanced network technologies that will enable it to provide enterprise customers with increasingly innovative services."[9]

The Commission declined, however, to extend its forbearance from the *Computer Inquiry* requirements beyond Qwest's existing specified broadband services because it could not conclude "that Qwest will lack market power with regard to any as yet unoffered broadband telecommunications services."[10]

Thus, there remain some remnants of the CEI and ONA obligations of the BOCs. These remnants are significant in that they require the BOCs to continue maintaining these arcane regulatory obligations which require tremendous resources for a benefit(s) that the Commission

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[8] *In the Matter of Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services,* Memorandum Opinion and Order, 23 FCC Rcd 12260, 12289 ¶ 56 (2008), *appeals pending sub nom. Ad Hoc Telecommunications Users Committee v. FCC*, Nos. 08-1288, *et al.* (D.C. Cir. *pet. for rev.* filed Sept. 3, 2008).

[9] *Id.* ¶ 57.

[10] *Id.* at 12291 ¶ 63.

has repeatedly recognized is greatly diluted if not altogether non-existent. The ONA reports[11] that the BOCs are required to file are superfluous in the sense that an information service provider has access to all the telecommunication services, available and needed, to offer its information services.[12] The BOC telecommunications services are either tariffed on the federal or state level, or they have been deemed competitive enough that they are deregulated.[13] BOCs are required, however, pursuant to CEI plans not only to identify available telecommunications service inputs but also to demonstrate how it will use those inputs to provide its information services (which by definition are competitive and unregulated).[14] It is readily apparent that such a requirement will provide a BOC's competitors an undue advantage and provide disincentives to BOC innovation in the information service area.

The benefits also pale in comparison to the costs. Historically, the demand for ONA services has been low.[15] The voluminous ONA plans and reports mandate a devotion of time and resources that is nowhere near commensurate to their utility to BOC competitors. Likewise, the quarterly nondiscrimination reports that detail performance intervals for these services are not needed based on the low demand for ONA services and the existence of Section 202

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[11] The reports are the Semi-Annual Report filed in March and September each year,the Annual Report filed in April, the Quarterly ONA Installation and Maintenance Reports, and the Annual Service Quality Affidavit.

[12] *See* Comments of the United States Telecom Association ("USTA"), WC Docket No. 06-157 at 17, filed Sept. 1, 2006 ("USTA Comments").

[13] *Id.*

[14] *Id.*

[15] *Id.* at 18-19 (noting that Verizon only received a handful of requests for ONA services in the past decade and that ISPs appear to be getting their necessary services outside of the ONA requirements; AT&T has been unable to discern any use of the ONA reports); Peter W. Huber, *et al., Federal Telecommunications Law* at § 5.4.6 (2nd ed. 1999).

nondiscrimination requirements.[16] Seven years ago, Qwest was alerting this Commission that it did not see any utility to the ONA and CEI reporting requirements and could not identify any valuable information obtained through these reports.[17] The intervening years have only further established this conclusion.

The regulatory relief BOCs have received in regard to broadband Internet access services and other broadband services still leave the CEI/ONA reporting requirements in place for other services, and these requirements place the BOCs at a significant competitive disadvantage to other providers, particularly cable and Voice over Internet Protocol providers. This competitive disadvantage translates into a less-robust slate of competitive alternatives for the end users which is definitely not in the public interest.

III. THE COMMISSION SHOULD ELIMINATE THE MATERIALITY STANDARD FOR RAO 12

Nearly three years ago, Qwest, along with BellSouth and AT&T (collectively "BOCs"), petitioned the Commission to eliminate the $1 million materiality standard in Responsible Accounting Officers (RAO) Letter 12.[18] RAO 12 provides guidance on the *Joint Cost Order*'s auditing requirements.[19] The *Joint Cost Order* did not adopt a "materiality" standard in regard to affiliate transaction/cost allocation audits; instead, the $1 million materiality threshold appeared

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[16] *Id.*

[17] *See* Comments of Qwest Corporation, CC Docket Nos. 95-20 and 98-10 at 12, filed Apr. 16, 2001.

[18] Petition Requesting Expedited Relief of BellSouth Corporation, AT&T Inc., and Qwest Corporation requesting modification of RAO Letter 12, filed Dec. 5, 2005 ("RAO 12 Petition").

[19] *In the Matter of Separation of costs of regulated telephone service from costs of nonregulated activities, Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to provide for nonregulated activities and to provide for transactions between telephone companies and their affiliates,* Report and Order, 2 FCC Rcd 1298 (1987) ("*Joint Cost Order*"), *on recon.*, 2 FCC Rcd. 6701 (1988), *aff'd sub nom., Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990).

in a second revision to the RAO 12 letter.[20] A subsequent letter revealed that the $1 million materiality threshold did not apply just to individual deviations of $1 million or more, but to the "aggregate of all discrepancies" which impact nonregulated operations by $1 million or more.

The Petition demonstrated that the financial world and accounting profession generally view materiality as a concept that has both "quantitative" and "qualitative" elements.[21] Unfortunately, RAO 12 ignored qualitative considerations, *i.e.*, looking at the totality of the circumstances, in favor of a formulaic "quantitative" approach. The Securities and Exchange Commission counseled against reliance on a materiality standard that is purely quantitative.[22]

Ironically, these RAO letters, which are not the outgrowth of rulemaking proceedings (even though they have the force of rules), and are based solely on Bureau "guidance," require a notice and comment period to be altered or eliminated. Presumably the reasoning behind the $1 million materiality standard was that it would protect against intentional misstatements, but the prohibition against intentional misstatements applies regardless of materiality.[23] The BOCs, in the Petition, also identified a litany of measures that protect against intentional misstatements.[24] So the materiality requirement is simply superfluous in regard to intentional misstatements.

The BOCs also demonstrated how the replacement of rate-of-return regulation by price cap regulation for many LECs had significantly mitigated the risk of "cross-subsidizing" nonregulated operations and/or affiliates.[25] Moreover, the Commission's recent decision to

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[20] RAO 12 Petition at 3.

[21] *Id.* at 3-4.

[22] *Id.* at 7.

[23] *Id.* at 9.

[24] *Id.*

[25] *Id.* at 10.

forbear from applying its affiliate transaction rules and cost allocation manual ("CAM") requirements -- including the CAM audit requirement -- to Qwest renders RAO 12's materiality standard meaningless. As noted above, RAO 12 was issued to provide guidance to independent auditors on interpreting the *Joint Cost Order's* audit requirements. With forbearance from CAM audit requirements; there is simply no continuing need for the $1 million threshold. For the foregoing reasons, and additional reasons articulated in the BOCs' petition, the RAO 12 materiality threshold should be eliminated.

IV. THE COMMISSION SHOULD ELIMINATE DEPRECIATION REQUIREMENTS FOR PRICE CAP CARRIERS

Commission regulation of depreciation rates, methods and practices is no longer necessary and serves no purpose under price cap regulation. Depreciation regulation is a holdover from cost-based rate-of-return regulation. Under traditional rate-of-return regulation, changes in depreciation expense have a direct impact on rates of regulated services. In such a regulatory environment, Commission regulation of depreciation rates and service lives helped to ensure that customers were not subject to unjust and unreasonable rates. With the advent of price cap regulation in 1991, depreciation became much less important.[26] However, depreciation expense continued to play a minor role through the sharing mechanism and the low-end

[26] The Commission's *LEC Price Cap Order* laid out a methodology for changing access charge rates that was largely based on productivity changes and overall inflation rather than changes in the costs that an individual company incurred. As such, changes in depreciation expense and other costs had little, if any, direct affect on prices. The only direct cost adjustments allowed under price cap regulation are "exogenous cost" adjustments from which depreciation rate changes are excluded. *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, 6787-89 ¶¶ 5-20, 6809 ¶¶ 182-87 (1990) ("*LEC Price Cap Order*"); Erratum, 5 FCC Rcd 7664 (1990); Order on Reconsideration, 6 FCC Rcd 2637, 2662-76 ¶¶ 58-85 (1991). *See also* 47 C.F.R. § 61.45.

adjustment that were triggered by rates-of-return above or below certain specified levels.[27] Any reasonable justification for continuing to regulate depreciation practices of price cap LECs, such as Qwest, ceased to exist with the elimination of price cap sharing[28] and the low-end adjustment (*i.e.*, for carriers with pricing flexibility).[29]

In recent years, the Commission has addressed depreciation both in its biennial regulatory review proceedings[30] and in response to a forbearance petition filed by USTA.[31] Despite the shrinking role of depreciation, the Commission has been reluctant to eliminate depreciation regulation for price cap carriers even though it has the authority to do so (or to forbear).[32] While

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[27] *See LEC Price Cap* Order, 5 FCC Rcd at 6801-07 ¶¶ 120-65 (which discuss the adoption of the sharing mechanism and low-end adjustment).

[28] *See In the Matter of Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform*, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642, 16649 ¶¶ 10-11 (1997), *aff'd in part and rev'd in part sub nom. USTA v. FCC*, 188 F.3d 521 (D.C. Cir. 1999).

[29] *See In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14304 ¶ 162 (1999), *aff'd sub nom. WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

[30] In its 1998 proceeding, the Commission acknowledged that depreciation regulation should be eliminated "[a]s soon as robust competition exists in local exchange markets." *In the Matter of 1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers,* Notice of Proposed Rulemaking, 13 FCC Rcd 20542, 20547-48 ¶ 7 (1998). Ten years later, the Commission's depreciation regulations still remain in place for price cap carriers -- even though ILECs such as Qwest, have experienced significant losses in local exchange market share, including significant declines in the number of access lines provided to customers. Qwest, itself, has lost over five million access lines in recent years.

[31] *In the Matter of 1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers; United States Telephone Association's Petition for Forbearance from Depreciation Regulation of Price Cap Local Exchange Carriers*, Report and Order in CC Docket No. 98-137, Memorandum Opinion and Order in ASD 98-91, 15 FCC Rcd 242 (1999) (hereafter referred to as the "*USTA Depreciation Order*").

[32] The 1996 Act gave the Commission the discretion to prescribe depreciation rates. Prior to this amendment, Section 220(b) of the Act required the Commission to prescribe depreciation rates.

the Commission adopted a standard for granting waivers to price cap carriers from its depreciation rules, the Commission has never granted a waiver under this standard.[33]

The same reasoning that supports the Commission's recent decisions to forbear from applying the cost assignment rules to AT&T, Verizon and Qwest in the *ARMIS Forbearance Order*[34] and *AT&T Cost Assignment Forbearance Order*,[35] applies equally to the Commission's depreciation rules, as applied to price cap carriers. In these forbearance decisions, the Commission "conclude[d] that there is no current, federal need for the Cost Assignment Rules, as they apply to Verizon and Qwest [and AT&T], to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; to protect customers; and to ensure the public interest."[36] The Commission further concluded that the cost assignment rules, as applied to price cap carriers, "are not routinely needed to ensure that interstate charges and

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Moreover, Section 10 of the 1996 Act allows the Commission to forbear from regulating depreciation if certain conditions are met.

[33] Qwest is the only price cap LEC to request a waiver of the depreciation rules under the standard that the Commission adopted in the *USTA Depreciation Order*. *See* Petition for Waiver of Qwest Corporation, WC Docket No. 05-259, filed July 22, 2005 with corrected caption submitted July 28, 2005. To date, the Commission has not acted on Qwest's petition for waiver. The standard that the Commission established effectively required price cap LECs to waive any rights that they might have to recover depreciation reserve deficiencies arising from uneconomically-long service lives that the Commission prescribed in the past. *See USTA Depreciation Order*, 15 FCC Rcd at 243 ¶ 2.

[34] *In the Matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), et al.*, Memorandum Opinion and Order *and Notice of Proposed Rulemaking*, WC Docket Nos. 07-139, 07-204, *et al.* (rel. Sept. 6, 2008), ("*ARMIS Forbearance Order*").

[35] *In the Matter of Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008), ("*AT&T Cost Assignment Forbearance Order*"), *pet. for recon. pending*, and *appeal pending sub nom. NASUCA v. FCC*, No. 08-1226 (D.C. Cir. June 23, 2008).

[36] *ARMIS Forbearance Order* ¶ 27.

practices are just, reasonable, and not unjustly or unreasonably discriminatory."[37] The same conclusions apply with respect to enforcement of the depreciation rules against price cap carriers. That is, in the absence of rate-of-return regulation, the depreciation rules are not needed to ensure interstate rates are just, reasonable, and not unreasonably discriminatory. Therefore, the Commission should eliminate its depreciation rules for price cap carriers.

V. THE COMMISSION SHOULD REPEAL THE GRANDFATHERING FOR LINE-SHARED LOOPS

Qwest calls for the long-overdue elimination of Rule 51.319(a)(1)(i)(A). This rule grandfathered Line Sharing circuits that existed prior to the date of the *Triennial Review Order.*[38] The time for removal of this requirement is long overdue. The Commission stated within the order, that the lines would be grandfathered until the next biennial review commencing in 2004.[39] Clearly the additional four years have more than met whatever policy considerations the Commission was furthering with the grandfathering provision. By now, the competitive providers should have identified other ways to provision the service. And it goes without saying that the competitive providers have enjoyed access to the high-frequency portion of the local loop ("HFPL") at non-market based rates for five years even though there was no longer any

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[37] *Id.* ¶ 31.

[38] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*"), corrected by Triennial Review Order Errata, 18 FCC Rcd 19020 (2003) (subsequent history omitted).

[39] *Id.* at 17137-38 ¶ 264. The Commission, in paragraph 264 of the *Triennial Review Order*, stated, "...In addition, until the next biennial review, a proceeding that will commence in 2004, we grandfather all existing line sharing arrangements unless the respective competitive LEC, or its successor or assign, discontinues providing xDSL service to that particular end-user customer. During this interim period, we direct incumbent LECs to charge competitive LECs the same price for access to the HFPL for those grandfathered customers that they charged prior to the effective date of this Order."

impairment in regard to those facilities. The Commission's failure to removes these rules in the last two biennial reviews have provided these competitive carriers a regulatory-generated windfall. Meanwhile, Qwest, and other Regional BOCs, have been financing this windfall due to their inability to raise rates for the service. Qwest also must separately track these lines for service quality measures and also for billing purposes. This creates an administrative burden which is no longer necessary.

VI. THE COMMISSION SHOULD MODIFY THE MATERIALITY STANDARD FOR RULE 32.26

The Commission should modify Rule 32.26 to establish a materiality standard in line with GAAP. USTA, in its comments during the last biennial review, referenced an *ex parte* filing by Ernst & Young which noted that "materiality is an established, well-developed accounting concept that allows auditors to focus on meaningful errors and to make a qualitative assessment of the importance of such errors, from the perspective of the users of the statement at issue."[40] Using a materiality standard in accord with GAAP "would enable ILECs and their auditors to efficiently prepare and audit ILEC accounts, and would result in a more useful product for the Commission and its staff."[41]

Once again, Qwest is simply asking that the Commission take a step that it previously was prepared to take. In the Wireline Competition Bureau's Staff Report in the 2006 Biennial Review, Staff recommended that Rule 32.26 be modified to reflect a materiality standard rooted

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[40] *See* USTA Comments at 11-12, citing *ex parte* Letter from Deena Clausen, Ernst & Young, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-532, filed July 25, 2006.

[41] *Id.*

in GAAP.[42] The Staff noted that the Commission was already considering modifying Rule 32.26 based on the petition seeking modification of RAO 12. Staff noted that based on comments filed in the Biennial Review proceeding, it might no longer find that Rule 32.26 as implemented through RAO 12 to be necessary in the public interest as a result of increased competition and that the Commission consider revising the rule in the RAO 12 proceeding. Clearly Staff thought the proposed modifications to Rule 32.26 in these two contexts should be considered in conjunction and this proceeding provides the perfect opportunity for the Commission to apply Staff's recommendations so that the rule would properly reflect the competitive nature of the market and therefore remain in the public interest.

VII. CONCLUSION

For the foregoing reasons, and based on determinations the Commission has already made in other proceedings, Qwest urges the Commission to repeal or modify the rules and regulations per Qwest's recommendations.

Respectfully submitted,

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[42] *Federal Communications Commission 2006 Biennial Review*, Report, 22 FCC Rcd 2803, 2809 ¶ 15 and Recommendation at 2817 (2007).

CERTIFICATE OF SERVICE

I, Eileen Kraus, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be: 1) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 08-183; 2) and served, via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/ Eileen Kraus

October 6, 2008